UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORP. Plaintiff, v. SMALL VALUE PAYMENTS COMPANY Defendant.	No. 2-04CV-85

DEFENDANT SMALL VALUE PAYMENTS COMPANY'S MOTION FOR LEAVE TO FILE

Comes now Small Value Payments Company ("SVPCo"), Defendant, and files this Motion for Leave to File a Surreply (the "Surreply") to Plaintiff DataTreasury Corporation's Reply Brief on Claim Construction. In addition, SVPCo requests leave of this Court to file an oversized brief. For this Court's convenience, a copy of the Surreply is attached.

In this Court's Amended Agreed Case Management Order of July 27, 2005 (the "CMO"), this Court established a briefing schedule for the parties' claim construction issues. On March 15, 2006, DataTreasury Corporation ("DT") submitted its reply brief on claim construction (the "Reply"). Notwithstanding: (1) the instructions set forth in this Court's Patent Rules regarding the appropriate disclosure and exchange of claim terms and constructions; and (2) this Court's briefing schedule as set forth in the CMO, DT has advanced in its Reply constructions of various disputed claim terms and phrases that were never disclosed previously to SVPCo. Without the opportunity to respond to at

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least some of the claim construction arguments presented for the first time in DT's Reply, SVPCo is left sandbagged and substantially prejudiced.

In addition, given that DT filed an oversized Reply, SVPCo respectfully requests that this Court allow SVPCo a maximum of ten (10) additional pages over the allotted page limitation in this Court's Local Civil Rules so that SVPCo has a fair opportunity to respond to at least some of the issues raised for the first time in DT's Reply.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Court grant the instant motion and consider the attached Surreply. Also attached is a proposed form of order.

Respectfully submitted,

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Attorneys for Defendant and Counterclaimant Small Value Payments Company

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing instrument was served upon all counsel of record in the above entitled and numbered cause on this the 24th day of March, 2006.

__X___ Via ECF

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CERTFICATE OF CONFERENCE

The undersigned certifies that on March 28, 2006, he conferred with Opposing Counsel, Rod Cooper in a good faith attempt to resolve this matter without court intervention. Rod Cooper confirmed in our conversation that Plaintiff could not agree to this Motion, which is therefore opposed at this time.

Preston W. McGee